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IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

MARC ETHAN CHINITZ,

Defendant and Appellant.

B295460

(Los Angeles County  
Super. Ct. No. SA092498)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kathryn A. Solorzano, Judge. Affirmed.

Mary Jo Strnad, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Senior Assistant Attorney General, Joseph P. Lee and Jaime L. Fuster, Deputy Attorneys General, for Plaintiff and Respondent.

## INTRODUCTION

A jury found appellant Marc Ethan Chinitz guilty of the attempted murder of his coworker, Luis Carias, based on testimony that appellant repeatedly struck Carias on the head with a sledgehammer. The trial court sentenced appellant to a total of 34 years to life in prison. On appeal, appellant claims: (1) the prosecution deprived him of a fair trial by mishandling, losing, and failing to obtain significant exculpatory evidence; (2) the court should have excluded evidence that appellant threatened Carias prior to the crime because the prosecution obtained and disclosed this evidence to the defense only during trial; (3) the court erred in precluding appellant from presenting a third party's hostile messages to Carias as evidence of third-party culpability; and (4) the evidence was insufficient to prove that appellant attacked Carias. Finding no error, we affirm.

## BACKGROUND

### *A. The Information*

The Los Angeles County District Attorney charged appellant with the February 29, 2016, attempted premeditated murder of Luis Carias (Pen. Code, §§ 187, subd. (a), 664).<sup>1</sup> The information further alleged that appellant personally used a deadly weapon (§ 12022, subd. (b)(1)) and personally inflicted great bodily injury (§ 12022.7, subd. (a)).

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

## *B. The Evidence at Trial*

### *1. The Prosecution Case*

#### *a. Events Leading Up to the Offense*

In February 2016, Carias lived in a room within a construction site in Hawthorne. During the day, Carias operated heavy equipment at the site, and at night, he was in charge of security. Carias had known appellant, who also worked at the construction site, for four or five months.

Destiny Rivera was Carias's girlfriend. She lived with Carias in his room for about a year, until moving out about a week before February 29, 2016. During that month, appellant came over to Carias's room when Rivera was also there.<sup>2</sup> Appellant and Carias had an argument about \$50 Carias owed "Priscilla," who was a mutual friend.<sup>3</sup> Appellant angrily told Carias, "[Y]ou better have her fucking money by the end of today," and stated, "I will kill you and everyone that is here and anyone else." Appellant sounded serious, and he scared Rivera. Appellant and Carias later smoked methamphetamine, and then appellant left.

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<sup>2</sup> Carias testified this incident occurred one week before the February 29 attack. Rivera, who also testified at trial, was unsure about the date of this incident but thought it might have occurred within a month of when she moved out of Carias's room (about a week before February 29).

<sup>3</sup> Priscilla's real name was Maria Cardona, but the parties referred to her as Priscilla at trial and continue to do so on appeal. We do the same.

b. *The Offense*

On February 29, after lunch, Carias used methamphetamine because he was feeling tired. According to his testimony at trial, this drug use did not affect his memory or his ability to perceive. That night, appellant came over to Carias's room and asked if he could stay there because his girlfriend had kicked him out of the house. Once Carias let him in, appellant said he wanted to take some copper pipes from the site so he could sell them and buy alcohol. Carias told appellant not to take the pipes because Carias would get in trouble, and he offered to buy appellant alcohol instead. The two went to a liquor store nearby, where Carias purchased alcohol for both of them, and returned to Carias's room to drink it. They also smoked methamphetamine together. Carias asked appellant if he wanted Carias to call Priscilla to help him relax, and appellant agreed. After Priscilla arrived, Carias left her and appellant alone in his room and waited outside for about an hour, until appellant told him to return to the room because he wanted to talk to him.

Inside the room, Carias talked to Priscilla, as appellant moved behind him without saying anything. A few minutes later, appellant grabbed a sledgehammer from where Carias kept his tools and struck the right side of Carias's forehead with it. Carias looked back and saw appellant holding the sledgehammer. Appellant then hit Carias twice more with the sledgehammer, on his left temple and above his right ear. Carias was bleeding. Still holding the sledgehammer,

appellant said, “Mother fucker, why are you talking shit about me. You deserve to die.” Appellant dropped the sledgehammer, grabbed a sword that was in Carias’s room, and swung it toward Carias’s upper chest. Carias felt dizzy and asked for help, but appellant responded that Carias deserved to die. Priscilla then hugged appellant, told him to stop, and pushed him out of the room.

Paramedics later arrived at the scene and found Carias on his bed.<sup>4</sup> Carias’s head was bloody and had several lacerations, and there was a significant amount of blood throughout the room. Carias was lucid, oriented, and alert. He told the paramedics that he had fallen off a bicycle. At trial, Carias claimed he lied because he did not have a work permit, was using drugs, and did not want to get his construction company in trouble. Carias was transported to a nearby trauma center.

On March 1, Richard Pepena, the superintendent at the construction site, went into Carias’s room and saw a large amount of blood.<sup>5</sup> Pepena noticed a sledgehammer on top of a table and retrieved it because he needed it, and the sledgehammer was then used at the construction site. That morning, appellant arrived at the construction site, but told Pepena that he could not work that day. The next morning,

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<sup>4</sup> Carias did not know who called 911, but assumed it was Priscilla because no one else was there.

<sup>5</sup> The prosecution called Pepena to testify, and he was later recalled by the defense.

March 2, appellant reported for work and spoke briefly with Pepena. Pepena asked appellant if he had been in an altercation with Carias on February 29. Appellant admitted seeing Carias after work that day but denied fighting with him. During the conversation, appellant appeared nervous.

*c. Carias's Injuries and Medical Treatment*

Dr. David Burbulys was the attending physician in the emergency room where Carias was brought on February 29, 2016. Carias told Dr. Burbulys that he was sleeping, when a man hit his head and torso several times with a hammer and also punched and kicked him. Dr. Burbulys observed multiple lacerations on Carias's head and an area of bony crepitus (meaning he could feel the bones crunch) behind his ear. A CAT scan of Carias's head showed a skull fracture near the ear, blood between the brain and the skull, and bleeding into the brain itself. According to Dr. Burbulys, this was a life-threatening injury. Carias underwent brain surgery, during which a neurosurgeon removed skin, blood, bone, and damaged or dead brain tissue. At trial, Dr. Burbulys opined that Carias's head injuries could have resulted from a bicycle fall, but that it was slightly more likely he was assaulted with a weapon because of the multiple injury locations. Carias spent several days in the hospital and was discharged on March 9.

d. *The Investigation*

On March 11, 2016, Carias went to the Hawthorne Police station to file a report. He told Officer Lawrence Williams that appellant had assaulted him by hitting him in the head with a sledgehammer multiple times. He further told Officer Williams that after the assault, he ran out of his room toward the street and contacted firefighters. He failed to mention that Priscilla was in the room when the assault took place. At trial, Carias claimed that at the time of his report to Officer Williams, he did not clearly recall all the events.

On March 15, Detective The Vu of the Hawthorne Police Department went to the construction site and contacted Pepena, who led him to Carias's room. Detective Vu asked Pepena if he had located the sledgehammer that was in Carias's room. Pepena said he had taken the sledgehammer to use at the site. He then retrieved it, and gave it to the detective. Detective Vu photographed and measured the sledgehammer and placed it in a sealed evidence bag. The sledgehammer weighed 13.25 pounds and was 24 inches long.<sup>6</sup> Detective Vu spent about 20 minutes in Carias's room and did not request any forensic testing of the room. At trial, Detective Vu explained he did not believe forensic testing would be helpful, given that Carias and

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<sup>6</sup> At the prosecutor's request, Detective Vu presented the sledgehammer to the jury. For at least some of the time he was handling the sledgehammer at trial, Detective Vu was apparently not wearing gloves.

appellant frequented the room, which would explain the presence of their DNA at the scene.

That same day, Detective Vu interviewed Carias at the police station. Carias again identified appellant as his attacker. On April 26, Detective Vu met with Carias at the police station again. This time, Carias told Vu that Priscilla witnessed the assault. He again identified appellant as the assailant. At trial, Carias explained that he began remembering the incident better by that point, and that he had spoken to Priscilla before this second interview with Detective Vu, which jogged his memory. Carias again identified appellant as his assailant at two subsequent preliminary hearings.

*e. Chapo's Messages*

During the April 26 interview, Carias also told Detective Vu that a man named Victor Castro (a.k.a. Chapo) had sent Carias's girlfriend Rivera messages directed at Carias.<sup>7</sup> Carias showed Detective Vu the messages on Rivera's phone. Detective Vu took screenshots of the messages and sent them to his own phone, but somehow lost them. During cross-examination of Carias by defense counsel, Carias testified that Chapo wrote that he was mad at Carias

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<sup>7</sup> Castro's alias is alternately spelled in the reporter's transcript as either "Chappo" or "Chapo," and each party refers to him using one of these spellings. We refer to him as Chapo.

because Carias had gotten Chapo fired.<sup>8</sup> Carias added that Chapo accused him of being a snitch and told Rivera to stay away from him.<sup>9</sup> Carias explained that Chapo had punched him two weeks before the February 29 incident and was fired the next day.

During redirect examination, Carias testified that he had shown Chapo's messages to Detective Vu because he believed they were related to the case. He explained that he had a good relationship with appellant prior to the assault, that Chapo was the person with whom he had problems, and that Chapo and appellant were friends. Because Carias did not understand why appellant attacked him, he thought Chapo's messages might be relevant.

## *2. The Defense Case*

The defense called only Pepena to testify. He stated when he escorted Detective Vu to Carias's room on March 1, 2016, Detective Vu asked him if anyone had been in the room, and Pepena told him that he had. Pepena did not recall Detective Vu asking how many times he had been in

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<sup>8</sup> Testifying with the aid of an interpreter, Carias initially confirmed that Chapo had blamed him for getting Chapo "shot." Carias and the interpreter later clarified, however, that Chapo had blamed Carias for getting Chapo "fired."

<sup>9</sup> As discussed below, the trial court precluded the defense from presenting Chapo's messages as evidence that it was Chapo who had assaulted Carias. Thus, the court instructed the jury that the content of Chapo's messages was being offered to prove only Carias's state of mind.

the room or if anyone else had been there. Similarly, Pepena did not recall Detective Vu asking him who had access to the room. According to Pepena, at the time of the incident, appellant had worked at the construction site for about five or six months, and had never missed work until March 1, 2016, the day after the incident.

### *C. The Jury's Deliberations and Priscilla's Arrest*

Toward the end of trial, law enforcement detained Priscilla based on Detective Vu's notification that she was a person of interest, but then mistakenly released her. The jury began deliberating on July 5, 2018. In the early morning hours of July 6, 2018, Detective Vu learned that Priscilla had been re-arrested, and was able to interview her. Later that morning, the prosecutor informed appellant's counsel of Detective Vu's interview of Priscilla, and while the jury was still deliberating, moved to reopen the prosecution's case in order to present her testimony. The prosecutor noted that Priscilla's statement corroborated Carias's testimony about the February 29 attack. Defense counsel objected to reopening the case. While the parties were discussing the issue, the jury announced it had reached a verdict. The prosecution then withdrew its motion to reopen its case.

### *D. The Jury's Verdict and the Sentence*

The jury found appellant guilty as charged, and the trial court sentenced him to a total of 34 years to life in prison. Appellant timely appealed.

## DISCUSSION

### *A. Alleged Failure to Preserve Exculpatory Evidence*

Appellant contends law enforcement failed to preserve significant exculpatory evidence by: (1) mishandling and losing Chapo's messages; (2) mistakenly releasing Priscilla without first obtaining her statement or notifying defense counsel of her arrest; (3) failing to conduct forensic testing of items at the crime scene; (4) failing to ask Pepena who had used the sledgehammer after the incident, and contaminating it by touching it without gloves during trial; (5) failing to document interviews with Carias and Pepena or to search for any blood trail leading away from Carias's room; and (6) failing to confront Carias about his conflicting accounts. Citing *California v. Trombetta* (1984) 467 U.S. 479, appellant claims these alleged deficiencies deprived him of due process. As respondent points out, and appellant does not dispute, appellant raised none of these *Trombetta* claims below and has therefore forfeited the issue on appeal. (See *People v. Chism* (2014) 58 Cal.4th 1266, 1300 [defendant forfeited *Trombetta* claim by failing to raise it below].)

Moreover, were we to consider appellant's contentions, we would reject them. ““Law enforcement agencies have a duty, under the due process clause of the Fourteenth Amendment, to preserve evidence ‘that might be expected to play a significant role in the suspect’s defense.’ [Citations.] To fall within the scope of this duty, the evidence ‘must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the

defendant would be unable to obtain comparable evidence by other reasonably available means.””” ( *People v. Farnam* (2002) 28 Cal.4th 107, 166 (*Farnam*).) The failure to preserve evidence that was merely potentially useful to the defendant does not constitute a denial of due process, unless a defendant can show bad faith on the government’s part. (*Ibid.*; *Arizona v. Youngblood* (1988) 488 U.S. 51, 57-58 (*Youngblood*).) Appellant has failed to make the necessary showing.

First, as to Chapo’s messages, nothing in the record indicates they contained any admissions or other information connecting Chapo to the February 29 assault on Carias. To the extent these messages suggested Chapo had motive to assault Carias, their loss did not violate due process because the testimony of Carias and Detective Vu about the messages was both comparable and available to appellant.<sup>10</sup> (See *Farnam, supra*, 28 Cal.4th at 166.)

Second, Priscilla’s initial release, a few days before she was rearrested, did not lead to the loss of any evidence. Police later obtained her statement, and the prosecution moved to reopen its case and present her testimony (which was expected to corroborate Carias’s account) before the jury

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<sup>10</sup> As discussed below, the trial court correctly precluded appellant from using testimony about Chapo’s messages to suggest that Chapo was the one who assaulted Carias on February 29, as this evidence was insufficient to clear the threshold for admissibility of evidence of third-party culpability.

returned its verdict. Yet appellant opposed the prosecution's motion, expressing no desire to interview Priscilla.

Third, appellant's complaint about Detective Vu's failure to conduct forensic testing on various evidence is unavailing, as the failure to use particular investigatory tools does not violate the Due Process Clause. (*Youngblood*, *supra*, 488 U.S. at 59; see also *ibid.* [discussing hypothetical in which prosecution for drunken driving rests on police observation alone: "the defendant is free to argue to the finder of fact that a breathalyzer test might have been exculpatory, but the police do not have a constitutional duty to perform any particular tests"].) Additionally, because the results of unperformed forensic testing could not have had any readily apparent exculpatory value, appellant must establish that Vu acted in bad faith in failing to conduct such testing. (See *Farnam*, *supra*, 28 Cal.4th at 166; *Youngblood*, *supra*, at 57-58; *People v. Flores* (2020) 9 Cal.5th 371, 394 [defendant who claims evidence "could have been subjected to tests, the results of which might have exonerated the defendant," must show police acted in bad faith].) Nothing in the record suggests Detective Vu acted in bad faith. Appellant points only to the various alleged deficiencies in Detective Vu's investigation. But even if accepted at face value, appellant's complaints about Detective Vu's investigation would establish no more than negligence, falling short of the required showing of bad faith. (*Youngblood*, *supra*, 488 U.S. at 58 [negligent police conduct is insufficient to show bad faith].)

Fourth, appellant fails to establish the significance of Detective Vu's handling of the sledgehammer without gloves during trial, and of his failure to ask Pepena who had used the sledgehammer at the construction site. Given that neither the police nor appellant sought to conduct forensic testing on the sledgehammer, the asserted flaws were immaterial.

Fifth, while appellant complains of Detective Vu's failure to document some witness interviews or search for a bloody trail leading away from Carias's room (based on Carias's initial report to Officer Williams), appellant makes no attempt to show that these omissions led to the loss of any evidence, let alone evidence of readily apparent exculpatory value. He therefore cannot establish a *Trombetta* violation. Appellant similarly fails to even argue that the subject of his sixth and final complaint -- Detective Vu's alleged failure to confront Carias about inconsistencies -- led to the loss of any exculpatory evidence. Appellant's counsel was fully aware of Carias's inconsistencies and was able to cross-examine him about them at trial. Appellant's ability to confront Carias negates his *Trombetta* claim. (See *Farnam, supra*, 28 Cal.4th at 166.) Accordingly, appellant was not deprived of due process.

*B. The Discovery of Appellant's Prior Threats Against Carias*

*1. Background*

In a recorded interview with police, Rivera was shown photographs of appellant and reported she believed she recognized him as someone who had threatened Carias before the February 29 attack. She described the threats consistent with the testimony at trial. Appellant's counsel received a transcript of Rivera's interview before trial.

During a break in Carias's cross-examination, the prosecutor stated that as he was going over the transcript of Rivera's interview, it occurred to him that he had not yet asked Carias about appellant's threats. The prosecutor explained that he spoke to Carias about the subject that morning, and that Carias's recollection of the threats was similar to Rivera's. The prosecutor noted he had disclosed Carias's statement about the threats to appellant's counsel, and indicated he intended to present Carias's testimony on the subject to the jury.

Appellant's counsel objected to the introduction of this testimony, noting that Carias had not volunteered the information and that Detective Vu had not questioned him about it; counsel argued the defense was being blindsided by this new evidence. The court overruled the objection, finding that appellant's counsel had had adequate time to discuss the evidence with appellant and to prepare Carias's cross-examination on the subject, that the defense knew there was evidence of a prior threat by appellant based on

Rivera's police interview, and that the prosecutor immediately disclosed Carias's statement about appellant's threats to the defense. Thus, the court found no prosecutorial misconduct, and concluded that there had been no discovery violation and that introduction of the evidence would not deprive appellant of due process. In response, defense counsel stated she had not accused the prosecution of misconduct.

When Carias's cross-examination resumed, appellant's counsel questioned him about his claim that appellant had threatened him before the February 29 assault and about his failure to mention the incident at any time in the past. Carias confirmed and described the prior incident. Rivera later also testified about the threats in a manner consistent with Carias's account.

## *2. Analysis*

Appellant challenges the trial court's admission of Carias's testimony about appellant's prior threats. He claims the mid-trial disclosure of Carias's statement on the subject violated California discovery law and, because the court refused to exclude the testimony, deprived him of his constitutional rights to a fair trial and effective assistance of counsel. We review a trial court's ruling on discovery matters for abuse of discretion. (*People v. Ayala* (2000) 23 Cal.4th 225, 299.) We review underlying conclusions of law de novo, and the court's factual findings are reviewed for

substantial evidence. (*Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711.)

Under section 1054.1, the prosecution has a duty to disclose “written or recorded statements of witnesses . . . whom the prosecutor intends to call at the trial” if those statements are in the prosecution’s possession or if the prosecution knows them to be in the possession of investigating agencies. (§ 1054.1, subd. (f).) Under section 1054.7, the parties must generally provide required discovery at least 30 days before trial. (§ 1054.7.) If a party first obtains the information within 30 days of trial, it must immediately disclose it. (*Ibid.*)

By its express terms, section 1054.1 did not require the People to disclose Carias’s unrecorded oral statement. But even assuming Carias’s mid-trial statement was nevertheless subject to immediate disclosure, the prosecutor complied with this obligation by immediately relaying the statement to appellant’s counsel.

Appellant suggests the prosecutor violated disclosure requirements by failing to *ask* Carias about appellant’s threats before trial. He is mistaken. “[T]he prosecution ‘has no general duty to seek out, obtain, and disclose all evidence that might be beneficial to the defense.’” (*People v. Panah* (2005) 35 Cal.4th 395, 460 (*Panah*) quoting *In re Littlefield* (1993) 5 Cal.4th 122, 135 (*Littlefield*), italics omitted; accord, *Littlefield*, at 135-136 [holding that party must disclose names and addresses of intended witnesses if this information is known *or reasonably accessible* to it, but

clarifying, “We do not suggest . . . that a party has a duty to obtain a written statement from a witness, even if the witness is ready and willing to give such a statement”].) Neither the discovery statute nor the federal constitution compels the prosecution to obtain witness statements in order to disclose them to the defense. (See *People v. Zambrano* (2007) 41 Cal.4th 1082, 1163 [prosecution “need not extract all possible information from a private citizen who is a potential prosecution witness in order to disclose it to the defense”], disapproved on another ground by *People v. Doolin* (2009) 45 Cal.4th 390; cf. *People v. Verdugo* (2010) 50 Cal.4th 263, 287 [“Although defendant claims he was ‘taken by surprise and . . . unable to effectively counter this new evidence [notes of detective’s mid-trial examination of vehicle], the prosecution had no duty to obtain the evidence sooner than it did”], citing *Littlefield, supra*, at 135; *Panah, supra*, at 460 [relying on *Littlefield* to hold that prosecution committed no misconduct by failing to ask expert to prepare report sooner].)

Appellant suggests that permitting admission of Carias’s contested testimony would encourage “stonewalling.” However, nothing in the record suggests the prosecution deliberately avoided asking Carias about appellant’s threats to avoid disclosure to the defense. Indeed, the trial court found, and appellant’s counsel concurred, that the prosecutor engaged in no misconduct. Accordingly, we find no error in the admission of Carias’s challenged testimony.

*C. The Exclusion of Evidence of Third-Party  
Culpability*

*1. Background*

In her opening statement, appellant's counsel suggested it was possible that a third party had assaulted Carias. In response, the prosecution filed a motion to exclude evidence regarding Chapo's potential culpability. The trial court did not immediately rule on the prosecution's motion. As noted, during trial, appellant's counsel elicited from Carias that Chapo had sent Rivera hostile messages directed at Carias. When counsel asked Carias about the reason for Chapo's anger toward him, the prosecutor objected on relevance grounds. Appellant's counsel countered she was offering the messages to show Carias was "making up stories." In response, the court noted that the prosecution had moved to preclude evidence of Chapo's potential culpability, and that evidence of mere motive or opportunity to commit the crime was insufficient to meet the threshold for admissibility of evidence of third-party culpability. The court permitted appellant's counsel to question Carias about the reason he had brought Chapo's messages to Detective Vu's attention, but without eliciting the content of the messages.

Appellant's counsel proceeded to question Carias about his conversation with Detective Vu about Chapo's messages, and elicited that in one of those messages, Chapo said he was mad at Carias because he got Chapo fired. When appellant's counsel asked more generally about the content

of Chapo's messages, the prosecution objected on hearsay grounds. Appellant's counsel explained that the messages were being offered only to show Carias's state of mind, and the court overruled the objection. Carias then testified that in his messages, Chapo accused him of being a snitch, told Rivera to stay away from him, and blamed him for getting Chapo fired.

## 2. *Analysis*

Appellant contends the trial court erred in excluding the content of Chapo's messages as evidence of Chapo's culpability. He further claims the court's ruling violated his constitutional rights to a fair trial and to present a defense.

We review the trial court's exclusion of evidence of third-party culpability for abuse of discretion. (*People v. Prince* (2007) 40 Cal.4th 1179, 1242 (*Prince*).) “[T]hird party culpability evidence is admissible if it is “capable of raising a reasonable doubt of [the] defendant’s guilt,” but . . . “[w]e do not require that *any* evidence, however remote, must be admitted to show a third party’s possible culpability. . . . [E]vidence of mere motive or opportunity to commit the crime in another person, without more, will not suffice to raise a reasonable doubt about a defendant’s guilt: *there must be direct or circumstantial evidence linking the third person to the actual perpetration of the crime.*”” [Citations.] “[I]n making these assessments, “courts should simply treat third-party culpability evidence *like any other evidence*: if relevant it is admissible ([Evid. Code,] § 350) unless its

probative value is substantially outweighed by the risk of undue delay, prejudice or confusion [citation].”” (Ibid.)

Appellant contends he presented sufficient circumstantial evidence tying Chapo to the crime. We disagree. The record supports that Carias and Chapo had a contentious relationship, that Chapo had attacked Carias before the February 29 incident and was fired shortly thereafter, and that Chapo later sent Rivera hostile messages directed at Carias. Carias showed Chapo’s messages to Detective Vu, believing they could be related to the charged crime because Carias did not understand why appellant attacked him and because Chapo and appellant were friends. However, Carias never claimed Chapo was the one who assaulted him in the February 29 incident. To the contrary, Carias repeatedly identified appellant as his assailant.

This evidence established that Chapo had a motive to harm Carias and had done so in the past. Nothing in the record, however, linked Chapo to the February 29 assault on Carias, and the content of Chapo’s messages was therefore inadmissible as evidence of third-party culpability. (See *Prince, supra*, 40 Cal.4th at 1242; *People v. Clark* (2016) 63 Cal.4th 522, 598 [evidence of third-party’s animosity and prior confrontations with victim showed only motive and was thus properly excluded]; *People v. Adams* (2004) 115 Cal.App.4th 243, 253 [evidence of third-party’s prior fight with victim and his persistent anger toward victim was

properly excluded as insufficient evidence of third-party culpability].)

Appellant contends that the trial court prevented him from making the required showing by foreclosing inquiry into the content of Chapo's messages. Not so. Over the prosecution's objection, the trial court permitted appellant's counsel to elicit from Carias the content of Chapo's messages. Accordingly, the court did not abuse its discretion under state law in excluding the content of Chapo's messages as evidence of third-party culpability.<sup>11</sup> Nor did the trial court's ruling violate appellant's constitutional rights. (See *People v. Gonzales* (2012) 54 Cal.4th 1234, 1261 ["the exclusion of weak and speculative evidence of third party culpability does not infringe on a defendant's constitutional rights"].)

#### *D. The Sufficiency of the Evidence*

Appellant claims the evidence was insufficient to prove he assaulted Carias. In assessing the sufficiency of the evidence to support a conviction, "we review the entire record in the light most favorable to the judgment to

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<sup>11</sup> Appellant argues the trial court was required to make express findings on the probative value of Chapo's messages relative to the risk of prejudice. That is not the law. (See *People v. Riel* (2000) 22 Cal.4th 1153, 1187 ["the trial court "'need not expressly weigh prejudice against probative value . . . or even expressly state that [it] has done so'"]; *Prince, supra*, 40 Cal.4th at 1242 [trial court should treat third-party culpability evidence "'like any other evidence'"].)

determine whether it contains substantial evidence -- that is, evidence that is reasonable, credible, and of solid value -- from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Lindberg* (2008) 45 Cal.4th 1, 27f.) We do not second-guess the factfinder’s resolution of credibility issues or evidentiary conflicts. (*People v. Young* (2005) 34 Cal.4th 1149, 1181 (*Young*).) “[U]nless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction.”<sup>12</sup> (*Ibid.*)

Ample evidence supported the jury’s determination that appellant attacked Carias. Carias repeatedly identified appellant as his assailant at trial, at two preliminary hearings, and in multiple interviews with police. He expressed no doubt in his identification and never identified any other person as the assailant. Carias knew appellant and was able to see appellant hitting him with the sledgehammer. Nothing in Carias’s account was physically impossible or inherently improbable. His testimony was

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<sup>12</sup> Citing *In re Sodersten* (2007) 146 Cal.App.4th 1163, 1219 (*Sodersten*), appellant argues that because of law enforcement’s failure to preserve various items of evidence, we should apply a less deferential standard of review. His contention is meritless. Initially, *Sodersten* was a habeas corpus proceeding involving a claim that the prosecution had failed to disclose exculpatory evidence under *Brady v. Maryland* (1963) 373 U.S. 83. (*Sodersten, supra*, at 1219.) It did not address an appellate claim of insufficiency of the evidence. Moreover, as discussed above, we have found no actionable failure to preserve evidence in this case.

therefore sufficient to support the jury's finding that appellant committed the charged crime. (See *Young, supra*, 34 Cal.4th at 1181.)

Carias's account was supported by additional evidence. First, Rivera testified she witnessed appellant threatening to kill Carias before the charged crime, suggesting appellant had motive to harm Carias. (See *People v. Ashraf* (2007) 151 Cal.App.4th 1205, 1213 [“the presence or absence of motive is a circumstance going to the question of the guilt or innocence of the defendant”].) Second, appellant, who until that point had not missed a single day of work at the construction site, declined to work on March 1, 2016, the day after the assault, offering no explanation. The next day, March 2, when Pepena asked appellant if he had been in a fight with Carias, appellant appeared nervous. Appellant's conduct following the crime gave rise to an inference of consciousness of guilt. (Cf. *People v. Guajardo* (1994) 23 Cal.App.4th 1738, 1743 [defendant's nervousness in vicinity of police indicated consciousness of guilt]; *People v. Williams* (2013) 56 Cal.4th 630, 679 [evidence of defendant's flight after crimes were committed supported inference of consciousness of guilt].) Third, appellant admitted to Pepena that he had seen appellant after work on the day of the incident, thus corroborating a key part of Carias's account. This evidence reinforced Carias's testimony and supported the jury's verdict.

Appellant points to circumstances tending to diminish Carias's credibility. For instance, he notes that Carias: told

paramedics he had been injured by falling off his bicycle; told Dr. Burbulys that a man attacked him while he was asleep; told Officer Williams that he ran out of his room toward the street and contacted firefighters; and failed to mention Priscilla's presence in the room in his initial report to Officer Williams. Yet it was the jury's province to assess Carias's credibility and the reliability of his identification. (See *Young, supra*, 34 Cal.4th at 1181; see also *People v. Vu* (2006) 143 Cal.App.4th 1009, 1029 ["The jury is the ultimate judge of credibility"].) The jury was entitled to, and did, credit Carias's account. In short, sufficient evidence supported the jury's verdict.

**DISPOSITION**

The judgment is affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.**

MANELLA, P. J.

We concur:

WILLHITE, J.

COLLINS, J.